

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CR. NO. 1:CR-01-394
 :
 v. : (Judge Rambo)
 :
 JAMES JOHNSON : (Filed Electronically)

DECLARATION OF THOMAS THORNTON, ESQ.

Thomas A. Thornton, Esq., declares the following to be true and correct:

1. I am an Assistant Federal Public Defender, and served as defense counsel for James Johnson in his federal prosecution for inmate knife possession in violation of Title 18, United States Code, Section 1791.

2. Johnson was indicted for this offense on December 12, 2001, and was tried twice for his alleged involvement in this offense. Johnson's initial trial, which took place in June, 2002, resulted in a hung jury. Johnson's second trial, which took place in November, 2002, resulted in a conviction.

3. My recollection is that at the time of Johnson's indictment and trials, the law regarding the application of the Federal Sentencing Guidelines Career Offender Guideline, Section 4B1.1 of the Guidelines, to inmate weapons possession offenses was in transition. Specifically, at the time of Johnson's

indictment and trials, district judges in the Middle District of Pennsylvania had reached differing conclusions regarding whether inmate weapons possession was a crime of violence for purposes of the Career Offenders Guideline. While some appellate courts in other circuits had addressed this issue, the United States Court of Appeals for the Third Circuit had not definitely addressed this question, resolving the conflict between the district courts on this question.

4. I was aware of these legal developments while I was representing Mr. Johnson, and I kept Mr. Johnson informed regarding these legal developments throughout the course of my representation of this defendant. In particular, Mr. Johnson and I discussed the possibility that, under then-existing caselaw, he might be sentenced as a Career Offender prior to trial when we reviewed the plea agreements tendered by the government.

5. Knowing this, Mr. Johnson declined the government's plea offers in this case. My recollection is that the reasons articulated by Mr. Johnson for declining these plea agreements were not related to the possibility that Mr. Johnson could be sentenced as a career offender, a matter we discussed. Instead, I understood from Mr. Johnson that his reasons for declining the government's plea offer were based on his assertion that he had been selectively prosecuted and his position that he was factually innocent of the charge.

6. Following Mr. Johnson's trials and conviction, but prior to his sentencing, the United States Court of Appeals resolved this legal issue by holding that inmate knife possession was a crime of violence for purposes of the Career Offender Guidelines. As I had done throughout this case, I notified Mr. Johnson of this most recent legal development. I also lodged a written objection to the application of the career offender guideline to Mr. Johnson's case, noting the post-conviction change in the law regarding that issue in my written objections to the Pre-Sentence Report.

Pursuant to Title 28, United States Code, Section 1746, I declare the foregoing to be true and correct.

S/THOMAS A. THORNTON
THOMAS A. THORNTON, ESQ.
Assistant Federal Public Defender

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion to be competent to serve papers. That on May 18, 2005, he served a true and correct copy of the foregoing

Declaration of Thomas Thornton, Esq.

by electronic means by sending a copy to each of the e-mail addresses stated below:

Addressee: Thomas Thornton, Esq.
Federal Public Defender's Office
100 Chestnut Street
Harrisburg, PA 17101

and by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the places and addresses stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail in Harrisburg, Pennsylvania.

Addressee: James W. Johnson
FCI Allenwood Med.
09137-067
P.O. Box 2500
White Deer, PA 17887

S/MARTIN C. CARLSON
MARTIN C. CARLSON
FIRST ASSISTANT U.S. ATTORNEY

Dated: May 18, 2005